

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #8	CCRB Case #: 201506099	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 04/18/2015 1:45 AM	Location of Incident: Astor Place Subway Station and en route to TD2 Stationhouse	Precinct: 09	18 Mo. SOL 10/18/2016	EO SOL 10/18/2016	
Date/Time CV Reported Thu, 07/23/2015 3:07 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 07/23/2015 3:07 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Antonio Fernandes	24288	950399	TB
2. POM Sean Trentacosta	04067	952302	TB
3. POM Tongzhong Zhang	12206	954440	TB

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Johnpatric Harrigan	18227	950561	TB
2. SGT Roland Vilches	05157	905244	TB
3. POM Anthony Gambino	213	958203	TB

Officer(s)	Allegation	Investigator Recommendation
A.POM Antonio Fernandes	Force: At the Astor Place subway station in Manhattan, PO Antonio Fernandes used physical force against § 87(2)(b)	
B.POM Sean Trentacosta	Force: At the Astor Place subway station in Manhattan, PO Sean Trentacosta used physical force against § 87(2)(b)	
C.POM Sean Trentacosta	Abuse: At the Astor Place subway station in Manhattan, PO Sean Trentacosta interfered with § 87(2)(b)'s ability to record an incident.	
D.POM Sean Trentacosta	Discourtesy: At the Astor Place subway station in Manhattan, PO Sean Trentacosta spoke rudely to § 87(2)(b)	
E.POM Sean Trentacosta	Off. Language: At the Astor Place subway station in Manhattan, PO Sean Trentacosta made remarks to § 87(2)(b) based upon the sex of § 87(2)(b)	
F.POM Sean Trentacosta	Abuse: At the Astor Place subway station in Manhattan, PO Sean Trentacosta refused to provide his name and shield number to § 87(2)(b)	
G.POM Antonio Fernandes	Abuse: At the Astor Place subway station in Manhattan, PO Antonio Fernandes searched § 87(2)(b)'s property.	
H.POM Tongzhong Zhang	Discourtesy: En route to the Transit District 2 stationhouse in Manhattan, PO Tongzhong Zhang spoke rudely to § 87(2)(b) and § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
I.POM Tongzhong Zhang	Off. Language: En route to the Transit District 2 stationhouse in Manhattan, PO Tongzhong Zhang made remarks about an unknown individual based upon her perceived sexual orientation.	

Case Summary

§ 87(2)(b) filed this complaint online on July 23, 2015 with the CCRB.

On April 18, 2015 at approximately 1:45 a.m. at the Astor Place 6 subway station in Manhattan, § 87(2)(b) and § 87(2)(b) were stopped by PO Antonio Fernandes and PO Sean Trentacosta for entering through the turnstiles on a single Metrocard swipe. § 87(2)(b) is § 87(2)(b)'s fiancé. § 87(2)(b) alleged that he provided ID but it was insufficient for the officers. When he was unable to produce additional ID, § 87(2)(b) was placed under arrest. PO Fernandes and PO Trentacosta pushed § 87(2)(b) onto his knees against nearby benches as he was being handcuffed (**Allegation A and Allegation B**). While § 87(2)(b) was being handcuffed, PO Trentacosta allegedly interfered with § 87(2)(b) recording the incident (**Allegation C**). PO Trentacosta allegedly said, "You better not fucking video this" and he also allegedly called § 87(2)(b) a "stupid bitch" (**Allegation D**). PO Fernandes issued § 87(2)(b) a summons for theft of services. PO Trentacosta then allegedly called § 87(2)(b) a "stupid slut" (**Allegation E**). After being summonsed, § 87(2)(b) asked PO Trentacosta to identify himself and he allegedly refused to do so (**Allegation F**). After he was handcuffed, PO Fernandes searched § 87(2)(b)'s backpack (**Allegation G**). § 87(2)(b) was transported to Transit District 2 stationhouse in a prisoner van with PO Tongzhong Zhang and PO Anthony Gambino. PO Zhang allegedly said, "We got these retards. We got these dumb fucks. You fucked up" in reference to § 87(2)(b) and another man who was arrested at the subway station, § 87(2)(b) (**Allegation H**). A female prisoner was also picked up en route to the stationhouse. In reference to this female, but not in her presence, PO Zhang allegedly said, "Oh, she's a transvestite. She's a male. Looks like a dyke" (**Allegation I**).

§ 87(2)(b) was arrested as a result of this incident. § 87(2)(b) was charged with theft of services, resisting arrest, criminal trespass, possession of marijuana, and disorderly conduct (Board Review 16).

Mediation, Civil and Criminal Histories

- This case was ineligible for mediation. § 87(2)(b) stated during his interview that he was seeking to file a lawsuit in regards to this incident.
- The Office of the Comptroller responded to a request that no Notice of Claim has been filed by § 87(2)(b) or § 87(2)(b) regarding this incident (Board Review 01).
- § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
- § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) and § 87(2)(b) (Board Review 04/05)
- PO Fernandes has been a member of the service for four years. This is his first CCRB complaint (Board Review 06).
- PO Trentacosta has been a member of the service for three years and has no substantiated allegations. The only pattern applicable to this case involves one force allegation in which the complainant was uncooperative (Board Review 07).

- PO Zhang has been a member of the service for two years and has no substantiated allegations. PO Zhang has an open allegation in CCRB case 201506560. § 87(2)(g) (Board Review 08).

Findings and Recommendations

Potential Issues

- This complaint was filed more than three months after the incident occurred. Due to this delay, video footage from the subway station was no longer available from the MTA.
- Video of the incident recorded by § 87(2)(b) was not provided to the investigator. During her interview, § 87(2)(b) claimed that she was having trouble finding where she digitally stored the video. A call was placed to § 87(2)(b) on August 8, 2015 and a call was placed to § 87(2)(b) on August 12, 2015. Voicemails were left requesting the video. Letters and emails were sent to § 87(2)(b) and § 87(2)(b) on August 25, 2015 requesting the video. The letters were not returned by the USPS. The emails were not returned by the server.
- A statement was not obtained from a victim in this case, § 87(2)(b). The only available contact information for § 87(2)(b) was an address from his arrest report. Two letters were mailed to § 87(2)(b) at this address. These letters were not returned by the USPS and § 87(2)(b) did not respond to these letters. A Lexis search on August 10, 2015 did not produce any additional contact information for § 87(2)(b).

Allegation A – Force: At the Astor Place subway station in Manhattan, PO Antonio

Fernandes used physical force against § 87(2)(b)

Allegation B – Force: At the Astor Place subway station in Manhattan, PO Sean

Trentacosta used physical force against § 87(2)(b)

§ 87(2)(b) testified that he entered through the subway turnstiles with § 87(2)(b) his fiancé, right behind him (Board Review 09). The couple was stopped by PO Trentacosta after boarding a train. § 87(2)(b) provided his NYU student ID upon request. PO Trentacosta demanded another form of identification. § 87(2)(b) complained about why he was being asked to provide ID. § 87(2)(b) handed PO Trentacosta some papers he was carrying from school. PO Trentacosta grabbed § 87(2)(b)'s left arm, pulled it toward him, and turned him around to face in the opposite direction. PO Trentacosta pulled one arm behind his back and § 87(2)(b) placed his other arm behind his back. While this was happening, § 87(2)(b) asked if he was being arrested or detained. § 87(2)(b) was not doing anything with his body while this was happening. PO Trentacosta and PO Fernandes pushed § 87(2)(b) toward the ground. The front of § 87(2)(b)'s thighs were pressed against the benches he had been standing in front of. § 87(2)(b) complained that he was in pain. § 87(2)(b) was handcuffed.

§ 87(2)(b) testified that § 87(2)(b) swiped a Metrocard that the couple shares and both entered through the turnstiles (Board Review 10). The couple was stopped by PO Trentacosta after boarding a train. PO Trentacosta asked the couple to provide ID. § 87(2)(b) provided her state ID and § 87(2)(b) provided § 87(2)(b) student ID. § 87(2)(b) testified that § 87(2)(b) also handed PO Trentacosta some papers from NYU to identify himself. PO Trentacosta asked § 87(2)(b) to turn around. § 87(2)(b) asked why he was being asked to turn around. PO Fernandes turned § 87(2)(b) around and pulled his arms behind his back. § 87(2)(b) said, "What are you doing?" § 87(2)(b) was pressed against the wall. § 87(2)(b)'s knees were pressed against the

benches. § 87(2)(b) complained about being in pain. PO Fernandes hit § 87(2)(b)'s knees which caused § 87(2)(b) to fall toward the ground. § 87(2)(b) continued to state that he was in pain and to ask if he was being arrested. § 87(2)(b) was not doing anything with his body while the officers were handcuffing him.

PO Fernandes testified that § 87(2)(b) and § 87(2)(b) were stopped for crossing the turnstiles on one Metrocard swipe (Board Review 11). § 87(2)(b) became angry, was speaking in a high tone of voice, and was arguing about why he was being stopped. § 87(2)(b) refused to provide ID after being asked multiple times. § 87(2)(b) never attempted to provide his student ID. PO Fernandes told § 87(2)(b) he was under arrest. § 87(2)(b) said, "No, you're not putting me under arrest." § 87(2)(b) pulled back his arms away from the officers and began flailing his arms. PO Fernandes and PO Trentacosta grabbed § 87(2)(b)'s arms and pushed him toward the benches. § 87(2)(b)'s knees fell to the floor and his torso was pressed against the bench. § 87(2)(b) was not doing anything with his body while he was against the bench. PO Fernandes handcuffed § 87(2)(b). § 87(2)(b) did not complain about being in any pain while he was being handcuffed.

PO Trentacosta testified that § 87(2)(b) and § 87(2)(b) were stopped for doubling up through the turnstiles (Board Review 12). § 87(2)(b) stated that he did not have any ID. § 87(2)(b) was deemed to be under arrest after he failed to produce any ID. § 87(2)(b) pulled his body away from PO Fernandes and PO Trentacosta when they went to handcuff him. § 87(2)(b) threw his arms upwards and said, "You're not arresting me." PO Fernandes and PO Trentacosta grabbed § 87(2)(b)'s arms and pulled them behind his back. § 87(2)(b)'s body was turned to face the benches. § 87(2)(b) was pushed toward the benches and his torso and chest were bent over the bench with his knees on the floor. While in this position, § 87(2)(b) was kicking his legs. It took less than a minute to get § 87(2)(b) handcuffed.

Sgt. Vilches testified that § 87(2)(b) and § 87(2)(b) were stopped for doubling up through the turnstiles on a single Metrocard swipe (Board Review 13). § 87(2)(b) was asked to provide ID and he refused. Sgt. Vilches testified that after failing to produce ID, § 87(2)(b) was under arrest. § 87(2)(b) refused to be placed under arrest and was screaming, "It is my constitutional right not to give ID." § 87(2)(b) pulled his arms away from PO Fernandes and swung them to his sides. PO Fernandes and another officer grabbed § 87(2)(b)'s arms and pulled them behind his back. Sgt. Vilches did not remember in what position § 87(2)(b) was in when he was finally handcuffed. Sgt. Vilches did not recall if § 87(2)(b) was pushed onto the benches while he was being handcuffed. § 87(2)(b) did not complain about being in any pain while he was being handcuffed.

PO Harrigan testified that he did not know why § 87(2)(b) and § 87(2)(b) were stopped. § 87(2)(b) refused to provide his ID. PO Harrigan testified that an officer went to handcuff § 87(2)(b) (Board Review 14). PO Harrigan did not remember who was involved in handcuffing § 87(2)(b). § 87(2)(b) twisted his torso away from the officer and pulled his arms away from the handcuffing officer. § 87(2)(b) was leaning against a bench when he was handcuffed. PO Harrigan did not remember how § 87(2)(b) ended up over the bench. PO Harrigan did not remember § 87(2)(b) complaining about being in any pain while he was handcuffed.

Patrol Guide 203-11 states all members of service at the scene of a police incident must use minimum necessary force (Board Review 18). PG 203-11 goes on to say that "Whenever it becomes necessary to take a violent or resisting subject into custody, responding officers should utilize appropriate tactics in a coordinate effort to overcome resistance."

§ 87(2)(b), § 87(2)(g)

Allegation C – Abuse of Authority: At the Astor Place subway station in Manhattan, PO Sean Trentacosta obstructed § 87(2)(b) s ability to record an incident.

Allegation D – Discourtesy: At the Astor Place subway station in Manhattan, PO Sean Trentacosta spoke rudely to § 87(2)(b)

Allegation E – Offensive Language: At the Astor Place subway station in Manhattan, PO Sean Trentacosta made remarks based on the sex of § 87(2)(b)

Allegation F – Abuse of Authority: At the Astor Place subway station in Manhattan, PO Sean Trentacosta refused to provide his name and shield number to § 87(2)(b)

§ 87(2)(b) testified that after he was handcuffed he observed § 87(2)(b) recording the incident with her phone (Board Review 9). He heard noise behind him while he was being handcuffed, but could not specify more of what happened with § 87(2)(b)

§ 87(2)(b) testified that while § 87(2)(b) was being handcuffed she took out her phone to record the incident (Board Review 10). PO Trentacosta stepped toward § 87(2)(b) and said, “You better not fucking video this.” PO Trentacosta called § 87(2)(b) a “stupid bitch.” She initially had trouble starting the camera and did not capture these remarks. When she got her camera started, she stepped toward the officers to record. § 87(2)(b) was saying “Don’t hurt him. What are you doing?” PO Trentacosta asked her to step back and she complied by moving 10 to 15 feet away from the officers. § 87(2)(b) was handcuffed and taken out of the station by Sgt. Vilches and PO Harrigan. After § 87(2)(b) was taken out of the station, § 87(2)(b) spoke with PO Trentacosta about getting her ID back. § 87(2)(b) was issued a summons. When § 87(2)(b) asked why she was being summonsed, PO Trentacosta called her a “stupid slut.” § 87(2)(b) asked PO Fernandes for his name and he stated that it was on the summons. § 87(2)(b) asked PO Trentacosta for his name. PO Trentacosta stated that she had no right to that information. § 87(2)(b) did not know PO Trentacosta’s name when she was interviewed. § 87(2)(b) remembered that the officer who summonsed her had a “Hispanic sounding” name. § 87(2)(b) did not provide a copy of the video she recorded. A call was placed to § 87(2)(b) and § 87(2)(b) after their interviews requesting a copy of the video. A letter and email were also sent to § 87(2)(b) and § 87(2)(b) and § 87(2)(b) did not respond to any of these contact attempts.

PO Fernandes testified that at some point during this incident § 87(2)(b) who had been compliant and sitting on the bench, got off the bench (Board Review 11). PO Fernandes did not know what § 87(2)(b) was doing while § 87(2)(b) was being handcuffed. PO Fernandes did not observe § 87(2)(b) recording the encounter. PO Fernandes did not recall any officer telling § 87(2)(b)

§ 87(2)(b)'s shoulder to look inside the backpack. § 87(2)(b) complained about this and stated "I'm not consenting to a search." PO Fernandes did not stop looking in the bag until § 87(2)(b) had retrieved the papers he was seeking. During his interview, § 87(2)(b) complained about a search of his person after he was placed under arrest but did not mention a search of his bag after being arrested or anything about marijuana being discovered in his bag after he was arrested.

§ 87(2)(b) testified that § 87(2)(b) went into his backpack to retrieve papers from NYU after PO Trentacosta asked him if he had any other form of ID (Board Review 10). While he was looking in his backpack, PO Fernandes turned on his flashlight, pointed it toward the backpack, leaned over § 87(2)(b)'s shoulder and was looking inside the backpack. § 87(2)(b) complained about why PO Fernandes was looking in his bag. PO Fernandes leaned away but was still looking in the bag. § 87(2)(b) did not mention anything about a search of § 87(2)(b)'s bag after he was placed under arrest. § 87(2)(b) did not mention anything about marijuana being discovered in § 87(2)(b)'s bag.

PO Fernandes testified that after being asked to provide ID, § 87(2)(b) asked for and was granted permission to go into his backpack to retrieve ID (Board Review 11). PO Fernandes shined his light toward the bag in the area where § 87(2)(b) was reaching to make sure no weapons were being pulled out. Nothing about § 87(2)(b) made PO Fernandes feel unsafe. The male was not making any threatening motions into his bag and there were no shapes in the bag that aroused PO Fernandes' suspicions. § 87(2)(b) was subsequently placed under arrest when he did not provide adequate ID. After § 87(2)(b) was handcuffed, PO Fernandes searched PO § 87(2)(b)'s bag at the subway station. PO Fernandes testified that this was to ensure that no weapons were in the bag before he was transported. A jar of marijuana and a vaporizer were discovered in the bag.

PO Trentacosta testified that he asked § 87(2)(b) if there was anything in his backpack that could identify him (Board Review 12). § 87(2)(b) opened his backpack and retrieved a piece of paper. While § 87(2)(b) was looking in his backpack, PO Fernandes had his flashlight pointed toward the backpack as a safety precaution. § 87(2)(b) might have complained once about PO Fernandes looking in his bag. § 87(2)(b) was deemed to be under arrest after he could not provide an ID. After he was handcuffed, PO Fernandes searched § 87(2)(b)'s backpack and discovered marijuana. PO Trentacosta did not know if this search of § 87(2)(b)'s backpack occurred at the subway station or at the stationhouse.

Sgt. Vilches testified that § 87(2)(b) went into his backpack to retrieve documents (Board Review 13). Sgt. Vilches did not know if PO Fernandes was shining his light toward § 87(2)(b)'s bag as a safety measure. Sgt. Vilches did not recall if § 87(2)(b) complained about PO Fernandes shining his light toward the backpack. When § 87(2)(b) was unable to produce ID, PO Fernandes began to handcuff him. Marijuana and a vaporizer belonging to § 87(2)(b) were discovered at the stationhouse. Sgt. Vilches believed that these items were found in § 87(2)(b)'s backpack.

In *People v. Gokey* (1983 NY Lexis 3449), the search of a duffel bag incident to arrest was deemed invalid because the circumstances leading to the arrest did not support the reasonable belief that the suspect may have gained possession of a weapon or destroyed evidence in the bag (Board Review 17).

PO Fernandes testified that prior to § 87(2)(b) being deemed under arrest he was attempting to obtain some form of valid ID. § 87(2)(b) went into his bag to locate paperwork to identify himself. PO Fernandes shined his flashlight toward the bag and did not observe anything in the bag or any shapes in the bag that aroused his suspicions. The officers stated that this was a

procedural measure taken to protect themselves from someone pulling a weapon out of their bag during a stop.

[REDACTED]

§ 87(2)(b) was transported to Transit District 2 stationhouse on Canal Street in a van (Board Review 09). § 87(2)(b) was transported with § 87(2)(b) who was also arrested at the subway station. PO Zhang and PO Gambino, who had not been at the subway station, were working in the van. En route to the stationhouse, PO Zhang said, “We got these retards. We got these dumb fucks. You fucked up. You’re going to the precinct now.” Another female prisoner was picked up en route to the stationhouse. While the woman was being brought to the van, PO Zhang said, “Oh she’s a transvestite. She’s a male. Looks like a dyke.” The woman was not in a position to hear these remarks.

PO Trentacosta testified that Sgt. Vilches, PO Fernandes, and PO Harrigan left in the van with the two prisoners at the subway station (Board Review 12). PO Trentacosta did not remember any other officers being in the van. PO Trentacosta did not remember any Asian officer being in the van. No other prisoners were picked up en route to the stationhouse. No officer made any of the alleged remarks en route to the stationhouse.

PO Zhang testified that he was the operator of a prisoner van on the incident date (Board Review 21). PO Zhang received a call to pickup two prisoners at the Astor Place station. The prisoners were taken to the Transit District 2 stationhouse. PO Zhang was shown a photo of § 87(2)(b) and did not recall any interaction with him. PO Zhang did not recall any of the officers who were at the subway station traveling to the stationhouse in the van with the prisoners. PO Zhang did not say anything to either of the prisoners in the van. PO Zhang did not recall anyone in the van saying anything en route to the stationhouse. PO Zhang did not remember anything about the demeanor of the prisoners in the van. PO Zhang never said, “We got these retards. We got these dumb fucks. You fucked up” to the prisoners. No other prisoners were picked up en route to the stationhouse. PO Zhang did not say “Oh, she’s a transvestite. She’s a male. Looks like a dyke.”

PO Gambino testified that he was the operator of a transport van on the incident date (Board Review 22). PO Gambino could not remember anything distinctive about the transport of § 87(2)(b) to the stationhouse. After being provided information about the incident, PO Gambino vaguely remembered the incident but did not remember anything distinctive or unusual. PO Gambino did not remember § 87(2)(b) complaining about being arrested while being transported. PO Gambino did not recall if PO Zhang made any of the alleged remarks.

Patrol Guide 203-09 states that officers must be “courteous and respectful” in their contact with the public (Board Review 19). Patrol Guide 203-10 prohibits officers from “using discourteous or disrespectful language regarding another person’s gender, gender identity/expression, or sexual orientation” (Board Review 20).

§ 87(2)(b), § 87(2)(g)

Squad: 8

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date

